

reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services.* (15 points) In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity.* (35 points) In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium mem-

ber), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

(d) *Quality of project personnel.* (15 points) In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project. (Approved by the Office of Management and Budget under control number 1855-0007)

(Authority: 20 U.S.C. 7223; 1232)

**§ 225.12 What funding priority may the Secretary use in making a grant award?**

(a) The Secretary may award up to 15 additional points under a competitive priority related to the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

(b) The Secretary may elect to—

(1) Use this competitive priority only in certain years; and

## § 225.20

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11. (Approved by the Office of Management and Budget under control number 1855-0007)

(Authority: 20 U.S.C. 7223; 1232)

### Subpart C—What Conditions Must Be Met by a Grantee?

#### § 225.20 When may a grantee draw down funds?

(a) A grantee may draw down funds after it has signed a performance agreement acceptable to the Department of Education and the grantee.

(b) A grantee may draw down and spend a limited amount of funds prior to reaching an acceptable performance agreement provided that the grantee requests to draw down and spend a specific amount of funds and the Department of Education approves the request in writing.

(Authority: 20 U.S.C. 7223d)

#### § 225.21 What are some examples of impermissible uses of reserve account funds?

(a) Grantees must not use reserve account funds to—

(1) Directly pay for a charter school's construction, renovation, repair, or acquisition; or

(2) Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

(b) In the event of a default of payment to lenders or contractors by a charter school whose loan or lease is guaranteed by reserve account funds, a grantee may use these funds to cover defaulted payments that are referenced under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7223d)

## 34 CFR Ch. II (7–1–10 Edition)

### PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

#### Subpart A—General

Sec.

226.1 What is the State Charter School Facilities Incentive program?

226.2 Who is eligible to receive a grant?

226.3 What regulations apply to the State Charter School Facilities Incentive program?

226.4 What definitions apply to the State Charter School Facilities Incentive program?

#### Subpart B—How Does the Secretary Award a Grant?

226.11 How does the Secretary evaluate an application?

226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

226.13 What statutory funding priority does the Secretary use in making a grant award?

226.14 What other funding priorities may the Secretary use in making a grant award?

#### Subpart C—What Conditions Must Be Met by a Grantee?

226.21 How may charter schools use these funds?

226.22 May grantees use grant funds for administrative costs?

226.23 May charter schools use grant funds for administrative costs?

AUTHORITY: 20 U.S.C. 1221e–3; 7221d(b), unless otherwise noted.

SOURCE: 70 FR 75909, Dec. 21, 2005, unless otherwise noted.

#### Subpart A—General

#### § 226.1 What is the State Charter School Facilities Incentive program?

(a) The State Charter School Facilities Incentive program provides grants to States to help charter schools pay for facilities.

(b) Grantees must use these grants to—

(1) Establish new per-pupil facilities aid programs for charter schools;

(2) Enhance existing per-pupil facilities aid programs for charter schools; or